



FAIRFAX COUNTY

STAFF REPORT

V I R G I N I A

PROPOSED COUNTY CODE AMENDMENTS

Adopt New Chapter 108.1 (Noise Ordinance)

Repeal Chapter 108 (Noise Ordinance)

Repeal Chapter 5 (Excessive Sound Generation in Residential Areas
and Dwellings Ordinance) of Article 6 (Offenses)

PUBLIC HEARING DATES

Board of Supervisors

May 12, 2015 at 4:00 p.m.

**PREPARED BY
ZONING ADMINISTRATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
703-324-1314**

April 7, 2015

LK



Americans With Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice.
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STAFF COMMENT

The proposed amendment is on the 2014 Priority 1 Zoning Ordinance Amendment Work Program and is in response to a Board of Supervisors' (Board) request to review and revise the Noise Ordinance (Chapter 108 of the County Code) to better address the methodology used in noise measurements, consider the appropriateness of establishing daytime and nighttime noise levels to protect the community, and add other objective criteria to regulate noise within Fairfax County. On December 3, 2013, the Board adopted a new Article 6 (Excessive Sound Generation in Residential Areas and Dwellings Ordinance) to Chapter 5 (Offenses) of the County Code which gave the Police Department the ability to address certain sound that is generated in a residential dwelling or residential area that is plainly audible and discernible inside another person's dwelling with doors and windows closed. The new Article 6 of Chapter 5 was intended to be an interim step in addressing noise until more comprehensive amendments to Chapter 108 were considered by the Board. The proposed amendments, which include the establishment of a new Noise Ordinance (Chapter 108.1 of the County Code), the repeal of Chapter 108, and the repeal of Article 6 of Chapter 5, are in response to these requests.

Background

Fairfax County has a longstanding policy that certain sounds are a hazard to the public health, welfare, peace, and safety, and adversely affect the quality of life of its citizens. Many provisions in the current Noise Ordinance contain ascertainable and objective enforcement standards that do not depend upon the subjective tolerances of the listener. Provisions in Chapter 108 dealing with "nuisance noises," however, require enforcement based upon a subjective, "reasonable person" standard. In April 2009, the Supreme Court of Virginia, in the case of *Tanner v. City of Virginia Beach*, 227 Va. 432, 674 S.E.2d 848 (2009), struck down as unconstitutional a similar "reasonable person" standard found in Virginia Beach's noise ordinance. As a result of the *Tanner* decision, many jurisdictions throughout Virginia have either amended their noise ordinances, or are in the process of amending their noise ordinance to address the Supreme Court decision. For example, Arlington County, the City of Richmond, and the City of Virginia Beach have amended their noise ordinances in response to the *Tanner* decision. Staff has reviewed the adopted noise ordinances from these jurisdictions, and has incorporated similar provisions while maintaining as much of the current structure of the Fairfax County noise regulations as possible.

Because, excessive sound generation in residential areas was an issue that required more immediate attention, in December 2013 the Board adopted the Excessive Sound Generation in Residential Areas and Dwellings. This ordinance served as an interim solution to allow the Police Department to effectively respond to calls for service regarding excessive noise in residential areas. The addition of Article 6 to Chapter 5, Offenses, allowed the Police Department to enforce these types of sound violations while staff further reviewed and studied a more comprehensive overhaul of Chapter 108. Furthermore, in order to avoid potential conflicts between Article 6 of Chapter 5 and the nuisance provisions of Article 5 of Chapter 108, the nuisance provisions in Chapter 108 were repealed at the same time that Article 6 of Chapter 5 was adopted in December 2013.

Staff from the Department of Planning and Zoning (DPZ), the Department of Code Compliance (DCC), the County Attorney's Office, and the Police Department have been meeting regularly since 2013 to review the regulations from other jurisdictions, consider the applicable State Code provisions, discuss the public and Board comments, and to develop a new Noise Ordinance.

On February 18, 2014, staff presented the first draft of a new Noise Ordinance to the Board's Development Process Committee (Committee), which is a Committee of the entire Board. The overall goal of the proposed Noise Ordinance is to:

- Recognize that there will always be certain levels of noise that occur in the normal course of daily living;
- Allow certain levels of daytime noise so that people can live, work, and play during the day; and
- Minimize nighttime noise so residents have an appropriate quiet environment in their homes at night.

The proposed new Noise Ordinance would replace both the existing Chapter 108 and Article 6 of Chapter 5. The overall framework of the proposed new Noise Ordinance would be to:

- Prohibit certain activities (**prohibitions**);
- Exclude certain activities from the Noise Ordinance (**exceptions**); and
- When not specifically prohibited or excepted, then activities or sources of sound would be subject to **maximum decibel levels**.

The above framework would be further qualified by time, location, and duration limitations.

The Committee on February 18, 2014, requested staff to conduct a series of outreach meetings on the staff's proposed rewrite of the Noise Ordinance in order to solicit public input. Accordingly, staff conducted three meetings in May 2014 at different locations throughout the County. A total of approximately 200 people attended these meetings. In addition, the following organizations were notified about the amendment and were asked to provide input: the Environmental Quality Advisory Committee (EQAC), Northern Virginia Building Industry Association (NVBIA), Commercial Real Estate Development Association (NAIOP), Engineers and Surveyors Institute (ESI), Planning Commission, Fairfax County Park Authority (FCPA), Fairfax County Public Schools (FCPS), Fairfax County Department of Public Works and Environmental Services (DPWES), Washington Metropolitan Area Transit Authority (WMATA), Chamber of Commerce, Heavy Construction and Contractors Association and the Federation of Citizen Associations. Staff has also met with the FCPA, FCPS, WMATA, EQAC, the Planning Commission's Environment Committee, NAIOP/NVBIA, and the privately-owned trash haulers community. In addition, staff developed the <http://www.fairfaxcounty.gov/dpz/zoning/noiseordinance/> website for the proposed Noise Ordinance Amendment and received comments via an on-line comment form.

The number and variety of comments received from the public outreach was wide-ranging and it was clear from reviewing the comments that there was no clear consensus on the issues. On June 10, 2014, staff presented a summary of all comments received to the Committee. At that meeting, the

Committee directed staff to prepare a range of options for the Board to consider given the diversity of opinions and comments on the proposal.

On September 30, 2014, staff presented options to the Committee, and the Committee requested that the options be simplified to minimize changes from the existing Noise Ordinances. The Board further directed staff to take noise measurements at high school athletic events. Noise measurements were taken at high school football games at Hayfield, McLean, and Centreville High Schools. The measurements were taken using a noise meter and measured in decibels (dBA) (the units that measure pressure levels or intensity of sound). The measurements showed that the noise from the surrounding traffic was generally as loud as the cumulative sound coming from the games, including the use of loudspeakers, crowd noise, and the noise from the official's whistles, and these noise levels were measured at approximately 70 to 75 dBA, which is generally consistent with the maximum sound level of 72 dBA which is permitted in industrial districts.

Given that the FCPA and other golf course operators had expressed the need to begin operating power lawn equipment as early as 5:30 a.m. in order to accommodate 6 a.m. tee times, and in recognition that complaints regarding golf course lawn maintenance noise had been received from residents living adjacent to golf courses, staff also obtained a sample of noise level readings for golf course lawn equipment. Those measurements were taken at the FCPA Twin Lakes Golf Course on January 23, 2015, at different distances and using different pieces of power lawn equipment. The measurements revealed that leaf blowers were the loudest piece of equipment and the operation of leaf blowers exceeded 60 dBA when measured 100 yards from the operation of the equipment. The measurements also showed that the sound from the operation of all other lawn maintenance equipment was no more than 55 dBA when measured 50 yards from such operation. Staff believes that 50 yard distance is appropriate because 55 dBA is the current maximum noise level permitted in residential districts.

At the February 3, 2015, Committee meeting, staff distributed an updated draft Noise Ordinance and summary chart and requested guidance on several issues. With the understanding that additional modifications to the proposed amendment could be made as part of the public hearing process, the Committee recommended several changes to the staff proposal for advertising purposes including:

- Activities on School and Recreational Grounds – Advertise a decibel range of 60 to 72 dBA for limiting the maximum noise levels for cumulative noise when loudspeakers are used.
- “People Noise” – Begin the plainly audible prohibition standard at 11 p.m. on weekends and the day before a holiday.
- Dog Parks – Begin dog park hours at 8 a.m. on weekends and holidays.
- Operation of Power Lawn Equipment – Permit the use of power lawn equipment associated with golf course maintenance, except leaf blowers, beginning at 5:30 a.m. when operating more than 50 yards from a residence.
- Trash Collection – No changes to current proposal which is the same as the existing regulations in Chapter 108.
- Maximum Sound Levels – No changes to the proposed maximum decibel levels.

The proposed Noise Ordinance incorporates the recommended changes.

Proposed County Code Amendments

The proposed amendments to the County Code consist of three parts:

- The adoption of Chapter 108.1 (Noise Ordinance) (See Attachment A);
- The repeal of existing Chapter 108 (Noise Ordinance) (See Attachment C); and
- The repeal of the existing Article 6 (Excessive Sound Generation in Residential Areas and Dwellings Ordinance) of Chapter 5 (Offenses) of the County Code (See Attachment D).

Proposed Chapter 108.1 consists of the following:

Article 1 - General Provisions.

- Chapter 108.1 is referred to as the Noise Ordinance.
- It is the purpose and intent of the proposed Ordinance to recognize that certain noise is a hazard to the public health, welfare, peace, and safety, and the quality of life of the citizens of Fairfax County; that people have a right to and should be ensured of an environment free from sound that jeopardizes the public health, welfare, peace, and safety or degrades the quality of life; and it is the policy of the Board to prevent such noise to the extent such action may be permitted pursuant to Federal or State law.

Article 2 - Definitions.

- Words and phrases used in the proposed ordinance would have the meaning as outlined in the proposed definitions. Many of the definitions from Chapter 108 are being updated and carried forward into the proposed Ordinance, and new definitions are also being incorporated in order to define new terms and sound sources. Some of the new definitions include: continuous sound, discernible, dog park, dusk, golf course, impulse sound, instrument, mixed use area, non-residential area, plainly audible, recreational grounds and transportation facility.

Article 3 - Administration, Penalties and Authority and Duties.

- The current Noise Ordinance is administered and enforced by the Zoning Administrator. The proposed Noise Ordinance would be administered and enforced by the Director of DPZ and his/her duly authorized agents, including the Zoning Administrator, DCC and DPWES, and would be assisted by other Departments. The Police Department may also enforce the Noise Ordinance.
- In addition to the above, prosecution for the violation of any provisions of the proposed Noise Ordinance could be pursued before a magistrate upon the sworn complaint of two people who are not members of the same household alleging the specific violation

complained of, both of the complainants must affirm that made a reasonable attempt to request abatement of the violation, and that the violation continued after such request.

- Violations of the proposed Noise Ordinance could be prosecuted as a misdemeanor or a civil penalty, or the Board could seek injunctive relief from the Circuit Court. If so enforced by the Police Department, the civil remedies would not be applicable. In addition, pursuant to the *Code of Virginia*, the civil penalty provisions would not apply to noise generation in connection with business being performed on industrially zoned property, nor to railroads or to sound emanating from any area permitted by the Virginia Department of Mines, Minerals and Energy.

Article 4 - Prohibited Sound.

- Certain sound generating activities would be specifically prohibited and these prohibitions may be further qualified by time, duration, and location limitations. All of the proposed prohibited sounds and activities are listed in the “Applicability of the Proposed Noise Ordinance Table” set forth in Attachment B. The following activities are currently prohibited in Chapter 108 and would continue to be prohibited under the proposed Noise Ordinance at night: operation of most loudspeakers, outdoor construction, outdoor motor vehicle or mechanical device repair, outdoor powered model vehicle operation, trash collection in residential districts, and the loading and unloading of trucks within 100 yards of a residence.
- Generally, the time frame for prohibited activities would extend from 9:00/10:00 p.m. to 7 a.m. Certain activities, such as the use of loudspeakers and outdoor construction, would be prohibited until 9:00 a.m. on weekends and federal holidays. In recognition that some of the proposed time frames include 12 a.m./midnight, those time parameters would be defined to end at the specified time on the following day.
- Unless otherwise addressed by the proposed Chapter as either a prohibition or an exception, no person could permit, operate, or cause any source of sound or sound generation that exceeds the maximum sound limits outlined in the Maximum Sound Levels Table that is set forth in the proposed amendment (See Attachment A). The sound levels would be measured in decibels with a sound level meter. The sound level measurements would be taken at the property boundary of the sound source, or at any point within any other property affected by the sound.

The current Noise Ordinance has maximum sound levels for stationary noise sources with a maximum of 55 dBA in residential districts, 60 dBA in commercial districts, and 72 dBA in industrial districts. There is no distinction between daytime and nighttime noise levels, or between residential and nonresidential uses, such as a church or school, in residential districts. As previously mentioned, one of the parameters of the amendment is to ensure that people have the ability to live, work, and play during the day and to have an expectation of quiet in their homes at night. As such, staff believes it appropriate to have different daytime and nighttime maximum noise levels for residential areas in residential districts with a

maximum allowable decibel level of 55 dBA between 10 p.m. and 7 a.m. and a maximum sound level of 60 dBA between 7 a.m. and 10 p.m. It is also staff's opinion that the current maximum decibel level of 72 dBA is too high in industrial districts at night, and is recommending a maximum level of 65 dBA between 10 p.m. and 7 a.m. Staff further believes it appropriate to allow a maximum decibel level of 60 dBA at all times for those non-residential uses in residential districts, as it is believed that the current maximum decibel level of 55 dBA is too low for such uses given that a normal conversation has a decibel level of approximately 55 to 60 dBA. Finally, staff recognizes that Fairfax County is rapidly urbanizing and there are more mixed used areas, such as Tysons, Reston, Fair Lakes, Fairfax Corner, Merrifield, Kingstowne, and the various Community Business Centers, where sound producing activities may occur 24 hours a day. As such, staff is recommending that the maximum allowable sound level in mixed use areas be 65 dBA at any time.

In addition, the proposed Ordinance makes a distinction between continuous sound and impulse sound. Continuous sound is a sound whose intensity remains essentially constant during the period of observation and is measured with a sound level meter using the A-weighted network. Continuous sound levels are averaged over a period of time, are abbreviated as dBA, and were discussed in the preceding paragraph. Impulse sound is defined as acoustical energy characterized by a rapid rise to a maximum sound pressure followed by a somewhat slower decrease in sound pressure, both occurring within a short time frame. Impulse sound is measured in decibels, is abbreviated as dB, and is the actual highest sound level that occurs with no averaging. Examples of impulse sounds would include sound from weapons fire, pile drivers, and blasting. Except in residential areas in residential districts and industrial districts at night, the proposed maximum allowable impulse sound level would be 100 dB. Between 10 p.m. and 7 a.m., the proposed maximum allowable impulse sound would be 80 dB in residential areas in residential districts and 120 dB in industrial districts.

- Certain sound-producing activities that are plainly audible inside another person's residence and are discernible would be prohibited, with "plainly audible" being defined as sound that can be heard with the human ear, and "discernible" being defined as sound that is sufficiently distinct such that its source can be clearly identified. These activities include: noise from a person, motor vehicle or instruments (people noise) at night; and barking dogs, crowing roosters, and other animal noises.

Article 5 - Exceptions.

- Certain sounds or activities would not be subject to the proposed Noise Ordinance (exceptions), and these exceptions may be further qualified by time, duration, and location limitations. All of the proposed sounds and activities that would not be subject to the proposed Noise Ordinance are listed on the "Applicability of the Proposed Noise Ordinance Table" as set forth in Attachment B.
- Activities or sounds not subject to the Noise Ordinance at any time include: emergency work, alarms in an emergency situation; back-up generators during power outages; activities

preempted by Federal or State law; motor vehicles traveling on the right-of-way; operation of helicopters and airplanes; trains traveling on railroad tracks and railroad track maintenance; snow and ice removal; heat pumps/air conditioning units on single family lots when operating in accordance with manufacturers specifications; and impulse sound that does not exceed the maximum decibel levels listed in the Maximum Sound Levels Table, which is set forth in the proposed amendment (See Attachment A).

- Certain activities or sounds would not be subject to the Noise Ordinance during the day, but would be prohibited at night, including: certain loudspeakers; outdoor construction; outdoor trash and recycling collection; land fill operations; operation of lawn equipment; operation of mechanical devices for cleaning outdoors; and the use of dog parks.
- Certain activities or sounds would not be subject to the Noise Ordinance during the day, but would be subject to the maximum decibel levels at night, including: routine testing of alarms and back-up generators; transportation facilities; bells, carillons and other calls to worship; and band performances or practices, athletic contests, and other such activities on school or recreational grounds.
- Certain activities would be subject to the maximum decibel levels during the day and prohibited at night, including: most loudspeakers; outdoor motor vehicle or mechanical device repair; operation of powered model vehicles; and outdoor truck loading and unloading.

Article 6 – Waivers.

- The current Noise Ordinance allows for variances from the Noise Ordinance provisions that can be approved by the Zoning Administrator. The proposed amendment essentially carries forward these provisions, except that it refers to these modifications as a “waiver” instead of a “variance,” and allows the Director to approve such waiver requests instead of the Zoning Administrator.
- The Director may grant such a waiver if it is found that the noise does not endanger the public health, safety, or welfare, or that compliance with the Noise Ordinance produces serious hardship without providing an equal or greater benefit to the public. The administrative process for granting such waivers will continue to rest with the Zoning Inspections Branch of DPZ
- A waiver can only be granted for a period of up to one year, but any waiver could be renewed for a like period if the Director finds the waiver is again justified.
- Any person aggrieved by a waiver decision of the Director can appeal the decision to the County Executive within 30 days from the date of the decision. The County Executive must review the appeal within 60 days and either affirm or overturn the decision.

Article 7 - Proffered and Development Condition Applications.

- A property may be subject to proffered conditions and/or development conditions pertaining to noise, and the proposed Noise Ordinance would not negate any such conditions. In the event of any conflict between the conditions and the Noise Ordinance, the text of the Noise Ordinance in effect at the time the conditions were approved shall govern.

Article 8 - Severability.

- If any part of the Noise Ordinance is declared unconstitutional or invalid by a Court, such unconstitutionality or invalidity would not affect the validity of the Noise Ordinance in its entirety or any of the remaining portions of the Noise Ordinance.

Conclusion

Certain noises are a hazard to the public health, welfare, peace, and safety and adversely affect the quality of life of its citizens. However, it is also recognized that a certain amount of noise is inevitable, particularly in a suburban/urban area such as Fairfax County. It is believed that certain levels of daytime noise should be allowed so that people can live, work, and play during the day. Conversely, nighttime noise should be minimized so residents have an appropriate quiet environment in their homes at night. The proposed amendments address these overall themes by prohibiting certain sounds, not subjecting certain sounds to the Noise Ordinance (exceptions), and subjecting all remaining sounds to maximum sound (decibel) levels.

Staff recognizes that there is tension between citizens who want to make full use of their property and not be subject to noise regulations, and those citizens who live near the noise source and may be adversely impacted by it. It is staff's opinion that the proposed amendment provides an appropriate balance between these two valid and competing interests. As such, staff recommends approval of the proposed amendments with an effective date of 12:01 a.m. on the day following adoption.

ATTACHMENT A

PROPOSED COUNTY CODE AMENDMENT

April 7, 2015

1 **Amend the Fairfax County Code by adding a new Chapter 108.1, Noise Ordinance, to read**
2 **as follows:**

3
4 **ARTICLE 1. General Provisions.**

5
6 **Section 108.1-1-1. Short title.**

7
8 This Chapter may be referred to as the "Noise Ordinance" of the County of Fairfax.
9

10 **Section 108.1-1-2. Declarations of findings and policy.**
11

12 The Board hereby finds and declares that certain noise is a hazard to the public health, welfare,
13 peace and safety and the quality of life of the citizens of Fairfax County; that the people have a right
14 to and should be ensured of an environment free from sound that jeopardizes the public health,
15 welfare, peace and safety or degrades the quality of life; and that it is the policy of the Board to
16 prevent such noise to the extent such action is not inconsistent with Federal or State law.
17

18
19 **ARTICLE 2. Definitions.**
20

21 **Section 108.1-2-1. Definitions.**
22

23 (a) The following words and phrases, when used in this Chapter, shall for the purposes of this
24 Chapter, have the meanings respectively ascribed to them in this Section, except in those situations
25 where the context clearly indicates a different meaning:
26

27 (1) *A-weighted sound pressure level* shall mean the sound pressure level as measured on a sound
28 level meter using the A-weighted network. The level so read shall be abbreviated as dBA.
29

30 (2) *Board* shall mean the Fairfax County Board of Supervisors.
31

32 (3) *Continuous sound* shall mean a sound whose intensity remains essentially constant during
33 the period of observation. Continuous sound shall be defined for measurement purposes as sound
34 which is measured by the slow response setting of a sound level meter.
35

36 (4) *Decibel* shall mean a unit which describes the sound pressure level or intensity of sound. The
37 sound pressure level in decibels is twenty (20) times the logarithm to the base ten (10) of the ratio of
38 the pressure of the sound in microbars to a reference pressure of 0.0002 microbar; abbreviated dB.
39

1 (5) *Device* shall mean any mechanism which is intended to, or which actually produces sound
2 when operated or handled.

3
4 (6) *Director* shall mean the Director of the Fairfax County Department of Planning and Zoning
5 or his/her duly authorized agent.

6
7 (7) *Discernible* shall mean that the sound is sufficiently distinct such that its source can be
8 clearly identified.

9
10 (8) *Dog Park* shall mean either a public or privately owned open space area that is primarily
11 used by dogs not on a leash. A dog park shall not include areas that are located on individual single
12 family residential dwelling lots or a recreational ground.

13
14 (9) *Dusk* shall mean thirty (30) minutes after sunset, which is defined as the moment each day
15 when the top of the sun disappears below the western horizon.

16
17 (10) *Emergency work* shall mean any work performed for the purpose of preventing or
18 alleviating physical injury or illness or property damage threatened or caused by an emergency,
19 including work performed by public service companies when emergency inspection, repair of
20 facilities, or restoration of services is required for the immediate health, safety, or welfare of the
21 community and the operation of police cars, fire trucks, ambulances, helicopters and other vehicles
22 that are responding to emergencies.

23
24 (11) *Golf course* shall mean land area that is either publicly or privately owned and designed for
25 the game of golf with a series of nine (9) or eighteen (18) holes each including a tee, fairway and
26 putting green and often one (1) or more natural or artificial hazards. Any remaining portions of a
27 property containing a golf course, including clubhouses, parking areas and other recreational
28 facilities, shall for the purposes of this Chapter be deemed a recreational ground.

29
30 (12) *Impulse sound* shall mean acoustical energy characterized by a rapid rise to a maximum
31 sound pressure followed by a somewhat slower decrease in sound pressure, both occurring within a
32 short time frame. Impulse sound may include, but is not limited to, sound from weapons fire, pile
33 drivers or blasting.

34
35 (13) *Instrument* shall mean any musical instrument, radio, phonograph, compact disc player,
36 amplifier or any other device which produces, reproduces or amplifies sound.

37
38 (14) *Landfill* shall mean a site used in a controlled manner by a person for the dumping of
39 debris; or a disposal site operated by means of compacting and covering solid waste with an
40 approved material. This term is intended to include both debris landfills and sanitary landfills as
41 defined in Chapters 104 and 109.1 of the Fairfax County Code.

42
43 (15) *Mixed use area* means the parcel on which one (1) or more residential dwellings and at least
44 one (1) other non-residential use are located and any contiguous rights-of-ways, roads, streets, lanes,
45 sidewalks, or other such means of egress and ingress to any such parcel.

1
2 (16) *Motor vehicle* shall mean any vehicle which is self-propelled or designed for self-
3 propulsion including but not limited to, automobiles, trucks, truck-trailers, semitrailers, campers,
4 motorcycles, mini-bikes, motor scooters and motor boats. Motor vehicles shall not include lawn
5 mowers or other lawn equipment and nothing herein shall conflict with state law.
6

7 (17) *Noise* shall mean the intensity, frequency, duration or character of sounds from a single
8 source or multiple sources that may degrade the public health, safety or welfare.
9

10 (18) *Non-residential area* shall mean a parcel in a residential district that does not contain a
11 residential dwelling and contains non-residential uses such as schools, parks, places of worship, fire
12 stations and sewage treatment plants.
13

14 (19) *Person* shall mean any individual, corporation, cooperative, partnership, firm, association,
15 trust, estate, private institution, group, agency, or any legal successor, representative, agent, or
16 agency thereof.
17

18 (20) *Plainly audible* shall mean the sound can be heard by the human ear with or without a
19 medically approved hearing aid or device.
20

21 (21) *Powered model vehicles* shall mean any mechanically powered vehicle, either airborne,
22 waterborne or landborne, which is not designed to carry persons including, but not limited to, model
23 airplanes, boats, cars, drones and rockets.
24

25 (22) *Recreational grounds* shall mean any playground, athletic field, park or open space area
26 that is publicly or privately owned, including land owned by a homeowner's or condominium
27 association. Recreational grounds shall not include areas that are located on individual single family
28 residential dwelling lots or dog parks.
29

30 (23) *Residential area* shall mean a parcel on which a residential dwelling is located and any
31 contiguous rights of way, roads, streets, lanes, sidewalks, or other such means of egress and ingress
32 to any such parcel.
33

34 (24) *Residential dwelling* shall mean any structure in which one (1) or more persons live on a
35 permanent or temporary basis, including, but not limited to, single family dwellings, multiple family
36 dwellings, hotels and motels.
37

38 (25) *Road right-of-way* shall mean any street, avenue, boulevard, highway; or alley which is
39 open to the public.
40

41 (26) *Sound* shall mean an oscillation in pressure, particle displacement, particle velocity or
42 other physical parameter, in a medium with internal forces that causes compression and rarefaction
43 of that medium. The description of sound may include any characteristic of such sound, including
44 duration, intensity and frequency.
45

(27) *Sound level meter* shall mean an instrument to measure sound pressure levels which shall meet or exceed the American National Standards Institute (ANSI) Standard S1.4 for a "Type Two" meter and shall be calibrated by the manufacturer or a company that can certify the calibration at least one (1) time each year.

(28) *Sound generation or to generate sound* shall mean any conduct, activity or operation, whether human, mechanical, electronic or other, including but not limited to, any animal or bird, and any instrument, machine or device, whether continuous, intermittent or sporadic, and whether stationary or ambulatory in nature, which produces or results in a sound that is plainly audible and discernible to the human ear.

(29) *Transportation facility* shall mean bus and rail facilities to include stations, platforms, garages, maintenance and staging areas, associated parking areas, and other associated mechanical appurtenances such as traction power stations, communication rooms, train control rooms, tie-breaker stations and other similar facilities

(30) *Zoning administrator* shall mean the Fairfax County Zoning Administrator or his/her duly authorized agent.

(31) *Zoning district classification*: Refers to the scheme of land use classification contained in the Fairfax County Zoning Ordinance.

ARTICLE 3. Administration, Penalties and Authority and Duties.

Section 108.1-3-1. Administration and Enforcement.

(a) The provisions of this Chapter shall be administered and enforced by the Director and/or his/her duly authorized agents, including the Zoning Administrator, the Department of Code Compliance, and the Department of Public Works and Environmental Services, and shall be assisted by other County departments as applicable.

(b) In addition, the provisions of this Chapter may also be enforced by the Police Department. If so enforced by the Police Department, the civil remedies referenced below shall not be applicable.

(c) The person operating, controlling or allowing the sound generation or source shall be guilty of any violation caused by that generation or source. If it cannot be determined which person is operating, controlling or allowing the sound generation or source, any owner, tenant, resident or manager physically present on the property where the violation is occurring is rebuttably presumed to be operating or controlling the sound generation or source.

(d) Except as hereinbefore provided in Subparagraph (a) of this Section, a warrant may be obtained from a magistrate for the violation of any provision of this Chapter only upon the sworn complaint of a police officer or two (2) persons who are not members of the same household alleging the specific violation complained of, that either or both of the complainants requested or made a

1 reasonable attempt to request abatement of the violation, and that the violation continued after such
2 request. Provided, however, that if there be no more than one (1) household within one half (½) mile
3 of the sound source, a warrant may be issued upon the sworn complaint of one person making the
4 foregoing allegations.

5
6 (e) For purposes of this Chapter, whenever a time parameter includes 12 a.m. or midnight, that
7 time parameter shall be construed to end at the specified time on the following day.

8
9 **Section 108.1-3-2. Penalties.**

10
11 (a) Any violation of any provision of this Chapter shall constitute a Class 2 misdemeanor and
12 upon conviction thereof, shall be punishable up to no more than six (6) months in jail and a fine of
13 not more than \$1,000, either or both. Failure to abate any such violation within the time period
14 established by the Court shall constitute a separate Class 2 misdemeanor offense.

15
16 (b) In lieu of the criminal penalties set forth above, a violation of any provision of this Chapter
17 may be punishable by a civil penalty of not more than \$250, or \$500 for each subsequent offense.
18 However, this civil penalties provision shall not apply to noise generation in connection with
19 business being performed on industrially zoned property, nor shall this provision apply to railroads or
20 to sound emanating from any area permitted by the Virginia Department of Mines, Minerals and
21 Energy or any division thereof.

22
23 (c) In addition to, and not in lieu of, the penalties prescribed in this section, the Board may
24 apply to the circuit court for an injunction against the continuing violation of any of the provisions of
25 this Chapter and may seek any other remedy or relief authorized by law.

26
27 **Section 108.1-3-3. Authority and duties of the Director of Planning and Zoning.**

28
29 In addition to any other authority vested in him by law, the Director or his/her duly authorized
30 agent:

31
32 (a) May coordinate the sound control activities of all agencies and departments of the Fairfax
33 County government and advise, consult, and coordinate sound control activities with other local
34 governmental units, state agencies, inter-governmental agencies, the Federal government, and with
35 interested persons and groups with respect to the provisions of this Chapter.

36
37 (b) Shall issue such orders, rules and regulations and measurement procedures and
38 methodologies as may be necessary to effectuate the provisions of this Chapter and enforce the same
39 by all appropriate administrative and judicial proceedings.

40
41 (c) May enter and inspect any property, premises or place at any reasonable time for the purpose
42 of ascertaining compliance with any provision of this Chapter when granted permission by the
43 owner, or some person with reasonably apparent authority to act for the owner. When permission is
44 refused or cannot be obtained, a proper search warrant may be obtained from a Court of competent
45 jurisdiction upon showing of probable cause to believe that a violation of this Chapter may exist.

(d) May obtain warrants for violations of any of the provisions of this Chapter and apply to any court of competent jurisdiction for such injunctive relief as shall be necessary to terminate continuing violations of this Chapter.

(e) May perform such other acts as may be necessary to carry out the functions of this Chapter and such other acts as may be specifically enumerated herein.

ARTICLE 4. Prohibited Sounds.

Section 108.1-4-1. Specific prohibitions.

The following acts are violations of this Chapter:

(a) Unless otherwise excepted by this Chapter, the use of a loudspeaker or other sound amplification device that is mounted on the exterior of any structure or motor vehicle between 10 p.m. and 7 a.m. on Sunday through Thursday, or between 10 p.m. and 9 a.m. on Fridays, Saturdays and the day before a Federal holiday. However, this prohibition shall not apply to loudspeakers that are required by State or Federal regulations or provide a public service announcement, such as train or bus arriving.

(b) Any action related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property in the outdoors between 9 p.m. and 7 a.m. on Sunday through Thursday, or between 9 p.m. and 9 a.m. on Fridays, Saturdays, and the day before a Federal holiday.

(c) Outdoor repairing or modifying, any motor vehicle or other mechanical device between 9 p.m. and 7 a.m.

(d) The operation of powered model vehicles in the outdoors between 9 p.m. and 7 a.m.

(e) Outdoor collection of trash or recyclable materials in residential districts and/or within 100 yards of a residential dwelling between 9 p.m. and 6 a.m.

(f) Any person that operates or permits to operate any motor vehicle, mechanical device, noise source, or any combination thereof, at a landfill between 9 p.m. and 6 a.m. and when located within 100 yards of a residential dwelling.

(g) Outdoor loading or unloading trucks within 100 yards of a residential dwelling between 9 p.m. and 6 a.m.

(h) Unless otherwise addressed by this chapter, the operation of power lawn equipment, including but not limited to lawn mowers, leaf blowers, chain saws, trimmers and edgers:

- (1) Between 9 p.m. and 7 a.m. when operated within 100 yards from a residential dwelling,
or
- (2) Between 9 p.m. and 6 a.m. when operated 100 yards or more from a residential dwelling, or
- (3) Between 9 p.m. and 5:30 a.m. for golf course maintenance when operated 50 yards or more from a residential dwelling; or
- (4) Between 9 p.m. and 7 a.m. for golf course maintenance when operated less than 50 yards from a residential dwelling.

Notwithstanding the above, the operation of leaf blowers on all property, including on golf courses, is prohibited between 9 p.m. and 7 a.m.

(i) Unless otherwise excepted by this Chapter, the operation of mechanical devices within 100 yards of a residential dwelling for the cleaning of outdoor parking, pedestrian and/or loading areas between 9 p.m. and 7 a.m.

(j) Unless otherwise excepted by this Chapter, any person, motor vehicle or instrument that permits, operates, or causes any source of sound or sound generation to create a sound that is plainly audible in any other person's residential dwelling with the doors and windows closed:

- (1) Between 10 p.m. and 7 a.m. on Sunday through Thursday, or between 11 p.m. and 7 a.m. on Fridays, Saturdays, and the day before a Federal holiday; or
- (2) Between 1 a.m. and 7 a.m. on Saturdays, Sundays and federal holidays when the residence is located in a mixed use area and the sound is emanating from a nonresidential use.

In addition, the source of sound or sound generation must be discernible regardless of whether such doors and windows are closed.

(k) Any owner or person in control of any animal that allows or otherwise permits any such animal to bark, howl, bay, meow, squawk, quack, crow or make such other sound:

- (1) Between 10 p.m. and 7 a.m. that is plainly audible in any other persons residence with doors and windows closed and the source of sound generation shall be discernible regardless of whether such doors or windows are closed; or
- (2) Between 7 a.m. and 10 p.m. when the animal sound is plainly audible and discernible across real property boundaries or through partitions common to residential dwellings and such sound can be heard for more than two (2) consecutive or non-consecutive minutes in any ten (10) minute period of time. Animal sounds that can be heard for less

than two (2) consecutive or non-consecutive minutes in any ten (10) minute period shall not be subject to this Chapter.

The provisions of this paragraph shall not apply to any animal that, at the time of the sound or sound generation, was responding to pain or injury or was protecting itself, its kennel, its offspring, or a person from an actual threat; when the animal is a police dog that is engaged in the performance of its duties at the time of making the sound; or when part of a bona fide agricultural operation. This provision shall apply to all animal sounds emanating from the same property. Notwithstanding the provisions of this paragraph, animals located in a dog park shall be subject to the provisions of Par. (l) below.

(l) The use of dog parks between dusk and 7 a.m. Sunday through Thursday, or between dusk and 8 a.m. on Friday, Saturday and the day before a Federal holiday.

Section 108.1-4-2. Sound generation.

(a) Unless otherwise addressed by this Chapter, no person shall permit, operate, or cause any source of sound or sound generation to create a sound which exceeds the limits set forth in the following table titled "Maximum Sound Levels" when measured at the property boundary of the sound source or at any point within any other property affected by the sound. When a sound source can be identified and its sound measured in more than one (1) zoning district classification, the sound shall not exceed the sound limits set forth in the following table for the zoning district or area in which the source of sound is located, and the sound levels on the affected properties shall not exceed the sound levels set forth in the table for the affected property.

MAXIMUM SOUND LEVELS			
Use and Zoning District Classification	Time of Day	Continuous Sound (dBA)	Impulse Sound (dB)
Residential Areas (as defined herein) in Residential Districts	7 a.m. to 10 p.m.	60	100
Residential Areas (as defined herein) in Residential Districts	10 p.m. to 7 a.m.	55	80
Non-Residential Areas in Residential Districts	All	60	100
Mixed Use Area (as defined herein)	All	65	100
Commercial Districts	All	65	100
Industrial Districts	7 a.m. to 10 p.m.	72	120
Industrial Districts	10 p.m. to 7 a.m.	65	100

ARTICLE 5. – Exceptions.

Section 108.1-5-1. Exceptions.

No provisions of this Chapter shall apply to:

(a) The emission of sound for the purpose of alerting persons to the existence of an emergency, provided that such alarm signals cease once any such threat is no longer imminent.

(b) The emission of sound in the performance of emergency work.

(c) Activities for which the regulation of sound has been preempted by Federal or State law.

(d) Motor vehicles on road right-of-way.

(e) Operation of airplanes and helicopters.

(f) Trains traveling on tracks located in railroad right-of-way or easements, including trains serving an interstate area and trains serving the Washington metropolitan region, and railroad track maintenance,

(g) Back-up generators subject to the following:

(1) The operation of back-up generators during power outages resulting from storms and other emergencies.

(2) The routine testing and maintenance of back-up generators provided that such activity occurs between 7 a.m. and 9 p.m. and the routine testing shall not occur for more than two (2) consecutive or non-consecutive hours in any one (1) day. The testing and maintenance of such generators is prohibited for (i) more than two (2) consecutive or non-consecutive hours in any one (1) day; or (ii) during the hours of 9 p.m. to 7 a.m.

(h) Heat pumps and/or air conditioners located on property containing single family detached or attached residential dwellings that are operating in accordance with the manufacturer's specifications.

(i) Activities associated with the removal of snow and/or ice from walkways, parking areas and travel lanes.

(j) Impulse sound that does not exceed the maximum impulse sound levels contained in the Maximum Sound Levels Table contained in Sect.108.1-4-2 above.

(k) Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property between 7 a.m. and 9 p.m., provided that such activity does

1 not exceed 90 dBA in residential areas, and it shall be a violation of this Chapter to commence such
2 activity before 9 a.m. on Saturdays, Sundays, and Federal holidays.

3
4 (l) Operation of power lawn equipment:

5
6 (1) Between 7 a.m. and 9 p.m. when operated within 100 yards from a residential dwelling; or

7
8 (2) Between 6 a.m. and 9 p.m. when operated 100 yards or more from a residential dwelling;
9 or

10
11 (3) Between 5:30 a.m. and 9 p.m. for golf course maintenance when operated 50 yards or
12 more from a residential dwelling; or

13
14 (4) Between 7 a.m. and 9 p.m. for golf course maintenance when operated less than 50 yards
15 from a residential dwelling.

16
17 Notwithstanding the above, the operation of leaf blowers is not permitted prior to 7 a.m. on any
18 property, including on golf courses.

19
20 (m) Operation of mechanical devices to sweep or clean outdoor parking, pedestrian and/or
21 loading areas, except it shall be a violation of this Chapter to operate such devices when located
22 within 100 yards of a residential dwelling between 9 p.m. and 7 a.m.

23
24 (n) Trash and recycling collection, except it shall be a violation of this chapter to collect trash or
25 recyclable materials in the outdoors in residential districts and/or within 100 yards of a residential
26 dwelling between 9 p.m. and 6 a.m.

27
28 (o) Operation of a landfill, except it shall be a violation of this Chapter for any person to operate
29 or permit to operate any motor vehicle, mechanical device, noise source, or any combination thereof,
30 at a landfill between 9 p.m. and 6 a.m. and when located within 100 yards of a residential dwelling.

31
32 (p) The testing of plainly audible and discernible signal devices which are employed as warning
33 or alarm signals in case of fire, emergency, theft, or burglary, or imminent danger, provided that such
34 testing occurs between 7 a.m. and 9 p.m. and shall not occur for more than two (2) consecutive or
35 nonconsecutive hours in any one (1) day. The testing of such signal devices is prohibited for (i) more
36 than two (2) consecutive or non-consecutive hours in any one (1) day; or (ii) during the hours of 9
37 p.m. to 7 a.m.

38
39 (q) Operation of transportation facilities between 7 a.m. and 9 p.m.

40
41 (r) Band performances or practices, athletic contests or practices and other such activities on
42 school or recreational grounds, or any activity on recreational grounds customarily associated with its
43 intended use shall not be subject to the provisions of this Chapter between 7 a.m. to 10:00 p.m. on
44 Sunday through Thursday, or between 7 a.m. and 11:00 p.m. on Friday and Saturday or the day

1 before a Federal holiday. Loudspeakers or instruments associated with such activities shall be
2 subject to the following:

3
4 (1) Notwithstanding the other provisions of this Chapter, the use of loudspeakers or instruments,
5 except for unamplified musical instruments, shall not be permitted prior to 9 a.m. on
6 Saturdays, Sundays and Federal holidays; and

7
8 (2) The overall noise levels for the loudspeakers and/or instruments and the associated activities
9 shall not exceed 72 dBA at the property boundary of the noise source. *[The advertised range*
10 *is between 60 and 72 dBA]*

11
12 (s) The use of dog parks between 7 a.m. and dusk Monday through Friday, or between 8 a.m.
13 and dusk on Saturday, Sunday and Federal holidays.

14
15 (t) Bells, carillons, and other calls to worship shall not be subject to this chapter between 7 a.m.
16 and 10 p.m. provided that any such sounds do not occur for more than five (5) consecutive or
17 nonconsecutive minutes in any one (1) hour.

18 19 20 **ARTICLE 6. Waivers**

21 22 **Section 108.1-6-1. Waivers.**

23
24 (a) Any person responsible for any noise source may apply to the Director for a waiver or partial
25 waiver from the provisions of this Chapter. The Director may grant such waiver or partial waiver if
26 he/she finds that:

27
28 (1) The noise does not endanger the public health, safety or welfare; or

29
30 (2) Compliance with the provisions of this Chapter from which waiver is sought would produce
31 serious hardship without producing equal or greater benefit to the public.

32
33 (b) In determining whether to grant such waiver, the Director shall consider the time of day
34 when noise will occur, duration of the noise, its loudness relative to the required limits of this
35 Chapter, whether the noise is intermittent or continuous, its extensiveness, the technical and
36 economic feasibility of bringing the noise into conformance with this Chapter and such other matters
37 as are reasonably related to the impact of the noise on the health, safety and welfare of the
38 community and the degree of hardship which may result from the enforcement of the provisions of
39 this Chapter.

40
41 (c) No waiver or partial waiver issued pursuant to this Section shall be granted for a period to
42 exceed one (1) year, but any such waiver or partial waiver may be renewed for like periods if the
43 Director shall find that such renewal is justified after again applying the standards set forth in this
44 Section. No renewal shall be granted except upon application therefor.

1 (d) Any person aggrieved by a decision of the Director made pursuant to this Section may
2 obtain review of such decision by the County Executive by delivering a written statement of
3 grievance to the Office of the County Executive within thirty (30) days from the date of the decision.
4

5 The County Executive shall review all statements of grievances and shall, within sixty (60) days
6 from the date of the Director's decision, either affirm or set it aside, making such further order as
7 shall be necessary to effectuate the provisions of this Section.
8
9

10 **ARTICLE 7. Proffered and Development Condition Applicability**

11

12 **Section 108.1-7-1 Proffered and Development Condition Applicability.**

13

14 The provisions of this Chapter shall not negate any applicable proffered condition, development
15 condition, special permit or special exception condition pertaining to noise or sound. In the event of
16 any conflict between the conditions and this Chapter, the text of the Noise Ordinance in effect at the
17 time the conditions were approved shall govern.
18
19

20 **ARTICLE 8. Severability**

21

22 **Section 108.1-8-1. Severability.**

23

24 If any of the Articles, Sections, Paragraphs, sentences, clauses, or phrases of this Chapter shall
25 be declared unconstitutional or invalid by the valid judgment or decree of a court of competent
26 jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the Chapter in its
27 entirety or any of the remaining Articles, Sections, Paragraphs, sentences, clauses, and phrases.

ATTACHMENT B**APPLICABILITY OF PROPOSED NOISE ORDINANCE**

SOURCE OF SOUND	PROHIBITIONS	EXCEPTIONS (Not Subject to Noise Ordinance)	MAX DECIBELS (Pursuant to Proposed Maximum Sound Level Chart)
1. Outdoor Loudspeakers	Unless otherwise regulated: 1. Between 10 p.m. and 7 a.m. on Sun. – Thurs.; or 2. Between *10 p.m. and 9 a.m. on Fri, Sat., and the day before Fed. Holidays.	Use of certain loudspeakers that: 1. Are required by state or federal regulations; or 2. Provide a public service announcement, such as train or bus arriving.	Unless otherwise regulated: 1.*7 a.m. to 10 p.m. Mon. – Fri. 2. 9 a.m. to 10 p.m. Sat, Sun, Fed. Holidays
2. Outdoor Construction	Between 9 p.m. and 7 a.m. on Sun. – Thurs.; or Between 9 p.m. and 9 a.m. on Fri.*, Sat, and the day before a Fed. Holiday.	7 a.m. to 9 p.m. Mon. – Fri. 9 a.m. to 9 p.m. Sat*, Sun, Fed. Holidays provided that a maximum decibel level of 90 dBA is not exceeded in residential areas.	
3. Outdoor Motor Vehicle or Mechanical Device Repair	Between 9 p.m. to 7 a.m.		*7 a.m. to 9 p.m.
4. Operation of Powered Model Vehicles	Between 9 p.m. to 7 a.m.		*7 a.m. to 9 p.m.
5. Outdoor Trash and Recycling Collection	In residential districts and/or within 100 yards of a residential dwelling prohibited from 9 p.m. to 6 a.m.	1. At any location from 6 a.m. to 9 p.m. and, 2. When located 100 yards or more from a residential dwelling and not in a residential district, from 9 p.m. to 6 a.m.	
6. *Land Fill Operation	Within 100 yards of a residential dwelling prohibited from 9 p.m. to 6 a.m.	1. At any location from 6 a.m. to 9 p.m. and, 2. When located 100 yards or more from a dwelling, from 9 p.m. to 6 a.m.	
7. Outdoor Truck Loading/ Unloading	When located within 100 yards of a residential dwelling prohibited from 9 p.m. to 6 a.m.		*1. At any location between 6 a.m. and 9 p.m.; and 2. When located 100 yards or more from a residential dwelling between 9 p.m. and 6 a.m.

SOURCE OF SOUND	PROHIBITIONS	EXCEPTIONS (Not Subject to Noise Ordinance)	MAX DECIBELS (Pursuant to Proposed Maximum Sound Level Chart)
8. *Lawn Equipment Operation	<p>Unless otherwise excepted or prohibited</p> <ol style="list-style-type: none"> 1. When operated within 100 yards from a residence, between 9 p.m. and 7 a.m.; or 2. When operated 100 yards or more from a residence, between 9 p.m. and 6 a.m.; or 3. Between 9 p.m. & 5:30 a.m. for golf course maintenance when operated 50 yards or more from a residence; or 4. Between 9 p.m. and 7 a.m. for golf course maintenance when operated less than 50 yards from a residence. <p>Notwithstanding the above, the operation of leaf blowers on all property, including on golf courses, is prohibited between 9 p.m. and 7 a.m.</p>	<ol style="list-style-type: none"> 1. When operated within 100 yards from a residence, between 7 a.m. and 9 p.m., or, 2. When operated 100 yards or more from a residence, between 6 a.m. and 9 p.m., or 3. Between 5:30 a.m. and 9 p.m. for golf course maintenance when operated 50 yards or more from a residence, or 4. Between 7 a.m. and 9 p.m. for golf course maintenance when operated less than 50 yards from a residence. 	
9. *Operation of Mechanical Devices for cleaning outdoors	<p>When located within 100 yards of a residential dwelling, between 9 p.m. to 7 a.m., unless otherwise excepted.</p>	<ol style="list-style-type: none"> 1. At any location from 7 a.m. to 9 p.m. and, 2. When located 100 yards or more from a residential dwelling from 9 p.m. to 7 a.m. 	
10. *Person, Motor Vehicle or Instrument	<p>Unless otherwise excepted, prohibited when plainly audible inside a residential dwelling with doors and window closed, and the sound must be discernible regardless of whether such doors and windows are closed:</p> <ol style="list-style-type: none"> 1. Between 10 p.m. & 7 a.m. on Sun.-Thurs., or between 11 p.m. & 7 a.m. on Fri., Sat., and the day before a Fed. Holiday; or 2. Between 1 a.m. & 7 a.m. on Sat., Sun. and Fed. Holidays when the residence is located in a mixed use area and the sound is emanating from a nonresidential use. 		<ol style="list-style-type: none"> 1. Within any residential area between 7 a.m. to 10 p.m. on Sun. – Thurs; or from 7 a.m. to 11 p.m. on Fri, Sat., and day before a Fed holiday. 2. When the residence is located in a mixed use area and the sound is emanating from a nonresidential use, then 7 a.m. to 1 a.m. on Fridays, Saturdays and the day before a Fed holiday.

SOURCE OF SOUND	PROHIBITIONS	EXCEPTIONS (Not Subject to Noise Ordinance)	MAX DECIBELS (Pursuant to Proposed Maximum Sound Level Chart)
11. *Animals	<p>Animal noise:</p> <ol style="list-style-type: none"> 1. Between 10 p.m. and 7 a.m. that is plainly audible in any other persons residence with doors and windows closed and the source of sound generation is discernible regardless of whether such doors or windows are closed; or 2. Between 7 a.m. and 10 p.m. when the animal noise is plainly audible and discernible across property boundaries or through partitions common to residential dwellings and such sound can be heard for more than 2 consecutive or nonconsecutive minutes in any 10 minute period. Animal sounds that can be heard for less than 2 consecutive or non-consecutive minutes in any 10 minute period shall not be subject to the Noise Ordinance. 	<ol style="list-style-type: none"> 1. When the animal is responding to pain or injury or is protecting itself, its kennel, its offspring, a person from a real threat, or 2. When the animal is a police dog that is engaged in the performance of its duties at the time of making the noise. 3. When part of a bona fide agricultural operation. 	
12. Emergency Work		Any time	
13. *Alarms		<ol style="list-style-type: none"> 1. Emission of sound for purpose of alerting people to the existence of an emergency, provided that such alarm signals cease when any such threat is no longer imminent. 2. The routine testing of plainly audible alarms for fire, emergency, theft or imminent danger between 7 a.m. to 9 p.m., provided that such testing does not occur for more than 2 consecutive or nonconsecutive hours in any one day. The testing of such signal devices is prohibited for (i) more than 2 consecutive or nonconsecutive hours in any one day; or (ii) during the hours of 9 p.m. to 7 a.m. 	<ol style="list-style-type: none"> 1. Emergency alarm testing between 9 p.m. and 7 a.m.; and 2. Routine testing that occurs between 7 a.m. and 9 p.m. and for more than 2 consecutive or nonconsecutive hours in any one day.

SOURCE OF SOUND	PROHIBITIONS	EXCEPTIONS (Not Subject to Noise Ordinance)	MAX DECIBELS (Pursuant to Proposed Maximum Sound Level Chart)
14. *Preempted Activities		Activities for the regulation of sound that have been preempted by Federal or State law.	
15. *Snow and Ice Removal		Any time	
16. *Motor Vehicles		Motor vehicles on the road right-of-way - any time	
17. Airplanes and Helicopters		Airplanes and helicopter flying overhead - any time	
18. Trains		Anytime, trains traveling on tracks located in railroad right-of-way or easements, and rail road track maintenance.	
19. *Heat Pumps/Air Conditioners		Use of heat pumps/air conditioners on single family dwelling lots when operating in accordance with the manufacturer's specifications.	1. Use of heat pump/air conditioner on a single family dwelling lot not operating in accordance with the manufacturer's specifications; and 2. Use of heat pump/air conditioner on all non-single family dwelling lots
*20. Back-Up Generators		1. Use of back-up generators during power outages resulting from storms and other emergencies. 2. Routine testing and maintenance of back-up generators between 7 a.m. and 9 p.m. provided that such testing does not occur for more than 2 consecutive or nonconsecutive hours in any one day. The testing and maintenance of such generators is prohibited for (i) more than 2 consecutive or non-consecutive hours in any one day; or during the hours of 9 p.m. to 7 a.m.	1. Use of generators during power outages not caused by a storm or other emergency; 2. Routine testing and maintenance of back-up generators between 7 p.m. and 9 a.m.; and 3. Routine testing that occurs between 7 a.m. and 9 p.m. and for more than 2 consecutive or nonconsecutive hours in any one day.
21. *Impulse Sound		Impulse sound that does not exceed the maximum decibels listed in the Maximum Sound Level Chart.	Anytime

SOURCE OF SOUND	PROHIBITIONS	EXCEPTIONS (Not Subject to Noise Ordinance)	MAX DECIBELS (Pursuant to Proposed Maximum Sound Level Chart)
22. Transportation Facility		7 a.m. to 9 p.m.	9 p.m. to 7 a.m.
23. *Bells, Carillons and other Calls to Worship		7 a.m. to 10 p.m., provided that any such sounds do not occur for more than 5 consecutive or nonconsecutive minutes in any one hour.	1. 10 p.m. to 7 a.m., and 2. Between 7 a.m. to 10 p.m. when the sounds last for more than 5 consecutive or nonconsecutive minutes in any one hour.
24. *Band performances or practices, athletic contests or practices and other such activities on school or recreational grounds	Notwithstanding the other provisions of this Chapter, the use of loudspeakers or instruments, except for unamplified musical instruments, shall not be permitted prior to 9 a.m. on Saturdays, Sundays and Fed. Holidays. The overall noise levels for the loudspeakers and/or instruments and the associated activities shall not exceed 72 dBA at the property boundary of the noise source. <i>[The advertised range is between 60 and 72 dBA.]</i>	7 a.m. to 10 p.m. Sun. – Thurs and Fed. Holidays; or 7 a.m. to 11 p.m. Fri. Sat, and the day before a Fed. Holiday	10 p.m. to 7 a.m. Sun. – Thurs., Fed. Holidays 11 p.m. to 7 a.m. Fri., Sat. and day before a Fed. holiday
25. Dog Parks	Notwithstanding the other provisions, the use of dog parks between dusk and 7 a.m. on Sun. – Thurs.; or between dusk and 8 a.m. on Fri. Sat. and the day before a Fed. Holiday	Notwithstanding the other provisions, the use of dog parks between 7 a.m. and dusk Mon. – Fri., and between 8 a.m. and dusk on Sat., Sun. and Fed. Holidays	
26. All Other Sound Sources Not Listed Above			All other sound sources not listed above.

ATTACHMENT C

PROPOSED COUNTY CODE AMENDMENT

April 7, 2015

1 Amend Chapter 108, Noise, by repealing it in its entirety.

2
3 **ARTICLE 1. General Provisions.**

4
5 **Section 108-1-1. Short title.**

6
7 This Chapter may be referred to as the "Noise Ordinance" of the County of Fairfax.
8 (~~24-75-16A; 1-1-76~~)
9

10 **Section 108-1-2. Declarations of findings and policy.**

11
12 It is hereby declared to be the public policy of Fairfax County, in cooperation with Federal, State
13 and local governments and regional agencies, to promote an environment for its citizens free from
14 noise that jeopardizes their health or welfare or degrades the quality of life. Nothing contained in this
15 Chapter shall be construed to authorize or direct any action which shall result in any substantial
16 increase in noise levels from any noise source in Fairfax County.

17 (~~24-75-16A; 1961 Code, § 16A.1.2.~~)
18

19 **Section 108-1-3. Penalties.**

20
21 Any violation of any provision of this Chapter shall constitute a misdemeanor and any person
22 violating this Chapter shall, upon conviction, be punishable by imprisonment not to exceed thirty
23 (~~30~~) days or by a fine not to exceed one thousand dollars (\$1,000.00), or both. Each separate act on
24 the part of the person violating the Chapter shall be deemed a separate offense, and each day a
25 violation is permitted to continue unabated shall be deemed to constitute a separate offense.

26 (~~24-75-16A; 1961 Code, § 16A.1.3.~~)
27

28 **Section 108-1-4. Severability.**

29
30 If any of the Articles, Sections, Paragraphs, sentences, clauses, or phrases of this Chapter shall
31 be declared unconstitutional or invalid by the valid judgment or decree of a court of competent
32 jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the Chapter in its
33 entirety or any of the remaining Articles, Sections, Paragraphs, sentences, clauses, and phrases.

34 (~~24-75-16A; 1961 Code, § 16A.1.4.~~)
35

36 **Section 108-1-5. Enforcement.**

37
38 (a) Whenever the Zoning Administrator has reason to believe that a violation of any provision of
39 this Chapter or a rule or regulation issued pursuant thereto has occurred, he may give notice of

such violation to the person failing to comply with this Chapter and order said person to take such corrective measures as are necessary within a reasonable time thereafter.

Such notice and order shall be in writing and shall be served personally upon the person to whom directed, or if he be not found, by mailing a copy thereof by certified mail to his usual place of abode and conspicuously posting a copy at the premises, if any, affected by the notice and order.

If such person fails to comply with the order issued hereunder, the Zoning Administrator may institute such actions as are necessary to terminate the violation, including obtaining criminal warrants, and applying to courts of competent jurisdiction for injunctive relief.

Failure on the part of such person to take steps to comply with such order within the time provided for therein shall constitute a separate violation of this Chapter. If such person complies with such order promptly, no further action to terminate the violation shall be required, but compliance shall not be deemed to inhibit prosecution of such person for the violation.

- (b) If the noise source is a motor vehicle moving on a public right of way, violation of this Chapter shall be cause for the Zoning Administrator to obtain a criminal warrant forthwith.
- (c) Except as hereinbefore provided in Subparagraph (a) of this Section, a warrant may be obtained for the violation of any provision of Article 5 of this Chapter only upon the sworn complaint of a police officer or two (2) persons who are not members of the same household alleging the specific violation complained of, that either or both of the complainants requested or made reasonable attempt to request abatement of the violation and that the violation continued after such request. Provided, however, that if there be no more than one household within one half mile of the noise source, a warrant may be issued upon the sworn complaint of one person making the foregoing allegations.
- (d) Section 108-5-2(b) shall also be enforced by the Director of the Department of Animal Control, or his duly authorized agent.
(7-17-68, § 17-5; 24-75-16A; 1961 Code, § 16A.1.5; 3-75-108.)

ARTICLE 2. Definitions.

Section 108-2-1. Definitions.

- (a) The following words and phrases, when used in this Chapter, shall for the purposes of this Chapter, have the meanings respectively ascribed to them in this Section, except in those situations where the context clearly indicates a different meaning:
 - (1) *A weighted sound pressure level* shall mean the sound pressure level as measured on a sound level meter using the A weighted network. The level so read shall be postscripted dB(A) or dBA.

- 1
2 (2) *Decibel* shall mean a unit which describes the sound pressure level or intensity of sound.
3 The sound pressure level in decibels is twenty (20) times the logarithm to the base ten (10)
4 of the ratio of the pressure of the sound in microbars to a reference pressure of 0.0002
5 microbar; abbreviated dB.
6
- 7 (3) *Device* shall mean any mechanism which is intended to, or which actually produces noise
8 when operated or handled.
9
- 10 (4) *Disposal* shall mean the discharge, deposit, injection, dumping, spilling, leaking or placing
11 of any solid waste into or on any land.
12
- 13 (5) *Emergency work* shall mean work made necessary to restore property to a safe condition
14 following a public calamity, or work required to protect persons or property from
15 immediate exposure to danger, including work performed by public service companies
16 when emergency inspection, repair of facilities, or restoration of services is required for the
17 immediate health, safety, or welfare of the community.
18
- 19 (6) *Equivalent sound level (Leq)* shall mean the constant sound level that, in a given situation
20 and time period, conveys the same sound energy as the actual time-varying A-weighted
21 sound pressure level.
22
- 23 (7) *Landfill* shall mean a site used for the disposal of solid waste.
24
- 25 (8) *Motor vehicle* shall mean any vehicle which is self-propelled or designed for self-
26 propulsion including but not limited to, passenger cars, trucks, truck trailers, semitrailers,
27 campers, motor boats and racing vehicles; and any motorcycle (including but not limited to
28 motor scooters and mini-bikes) as defined in Paragraph 14 of § 46.1-1. Va. Code Ann.
29
- 30 (9) *Noise* shall mean any sound which may cause or tend to cause an adverse psychological or
31 physiological effect on human beings.
32
- 33 (10) *Noise disturbance* shall mean any unnecessary sound which annoys, disturbs, or perturbs
34 reasonable persons with normal sensitivities; or any unnecessary sound which reasonably
35 may be perceived to injure or endanger the comfort, repose, health, peace or safety of any
36 person.
37
- 38 (11) *Octave band analyzer* shall mean an instrument to measure the octave band composition of
39 a sound by means of a bandpass filter. It shall meet the specifications of the American
40 National Standards Institute publications. S1.4-1961, S1.6-1967, and S1.11-1966, or their
41 successor publications.
42
- 43 (12) *Person* shall mean any individual, corporation, cooperative, partnership, firm, association,
44 trust, estate, private institution, group, agency, or any legal successor, representative, agent,
45 or agency thereof.

~~(13) *Powered model vehicles* shall mean any mechanically powered vehicle, either airborne, waterborne or landborne, which is not designed to carry persons or property including, but not limited to, model airplanes, boats, cars and rockets.~~

~~(14) *Public right-of-way* shall mean any street, avenue, boulevard, highway, alley or public space which is owned or controlled by a public governmental entity.~~

~~(15) *Solid waste* shall mean any garbage, trash, refuse, debris, construction rubble and other discarded material.~~

~~(16) *Sound* shall mean a temporal and spatial oscillation in pressure, or other physical quantity, in a medium with internal forces that causes compression and rare fraction of that medium, and which propagates at finite speed to distant points.~~

~~(17) *Sound level meter* shall mean an instrument to measure sound pressure levels which shall meet or exceed performance standards for a "Type Two" meter as specified by the American National Standards Institute.~~

~~(18) *Sound pressure* shall mean the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space.~~

~~(19) *Stationary noise source* shall mean any equipment or facility, fixed or movable, capable of emitting sound beyond the property boundary of the property on which it is used.~~

~~(20) *Zoning Administrator* shall mean the Fairfax County Zoning Administrator or his duly authorized agent.~~

~~(21) *Zoning district classification*: Refers to the scheme of land use classification contained in the Fairfax County Zoning Ordinance.~~

~~(7-17-68, § 17-5.2; 24-75-16)~~

~~ARTICLE 3. Administration, Authority and Duties.~~

~~Section 108-3-1. Administration of the Ordinance.~~

~~The provisions of this Chapter shall be administered and enforced by the Zoning Administrator or his duly authorized agent.~~

~~(24-75-16A; 1961 Code, § 16A.3.1; 3-79-108.)~~

~~Section 108-3-2. Authority and duties of the Zoning Administrator.~~

~~In addition to any other authority vested in him by law, Zoning Administrator:~~

- 1 (a) ~~May conduct, or cause to be conducted, studies, research and monitoring related to noise~~
2 ~~and its prevention, abatement and control.~~
- 3
- 4 (b) ~~May conduct programs of public education regarding the causes and effects of noise and~~
5 ~~the means for its abatement, and encourage the participation of public interest groups in~~
6 ~~related public information efforts.~~
- 7
- 8 (c) ~~May coordinate the noise control activities of all agencies and departments of the Fairfax~~
9 ~~County government and advise, consult, cooperate and coordinate noise control activities~~
10 ~~with other local governmental units, state agencies, interstate and interlocal agencies, the~~
11 ~~Federal government, and with interested persons and groups with respect to the provisions~~
12 ~~of this Chapter.~~
- 13
- 14 (d) ~~Shall issue such orders, rules and regulations and measurement procedures and~~
15 ~~methodologies as may be necessary to effectuate the provisions of this Chapter and enforce~~
16 ~~the same by all appropriate administrative and judicial proceedings.~~
- 17
- 18 (e) ~~May make recommendations to the Board of Supervisors for changes to this Chapter to~~
19 ~~make it consistent with all preemptive State and Federal legislation.~~
- 20
- 21 (f) ~~May enter and inspect any property, premises or place at any reasonable time for the~~
22 ~~purpose of ascertaining compliance with any provision of this Chapter when granted~~
23 ~~permission by the owner, or some person with reasonably apparent authority to act for the~~
24 ~~owner. When permission is refused or cannot be obtained, a proper search warrant may be~~
25 ~~obtained from a Court of competent jurisdiction upon showing of probable cause to believe~~
26 ~~that a violation of this Chapter may exist.~~
- 27
- 28 (g) ~~May administer grants or other funds or gifts from public and private agencies, including~~
29 ~~the State and Federal governments, for the purpose of carrying out any of the provisions of~~
30 ~~this Chapter.~~
- 31
- 32 (h) ~~May secure necessary scientific, technical, administrative and operational services,~~
33 ~~including laboratory facilities, by contract or otherwise.~~
- 34
- 35 (i) ~~May obtain warrants for violations of any of the provisions of this Chapter and apply to any~~
36 ~~court of competent jurisdiction for such injunctive relief as shall be necessary to terminate~~
37 ~~continuing violations of this Chapter.~~
- 38
- 39 (j) ~~Shall make an annual report to the Board of Supervisors on the status and effectiveness of~~
40 ~~the Noise Ordinance, including the reasonableness of the noise standards prescribed therein,~~
41 ~~and shall make recommendations for improvement of this Ordinance.~~
- 42
- 43 (k) ~~May perform such other acts as may be necessary to carry out the functions of this Chapter~~
44 ~~and such other acts as may be specifically enumerated herein. (24-75-16A; 1961 Code, §~~
45 ~~16A.3.2; 3-79-108.)~~

ARTICLE 4. Noises Prohibited.

Section 108-4-1. Specific prohibitions.

The following acts are violations of this Chapter:

- (a) Using or operating a loudspeaker or other sound amplification device in a fixed or movable position exterior to any building, or mounted upon any motor vehicle for the purpose of commercial advertising, giving instructions, information, directions, talks, addresses, lectures, or providing entertainment to any persons or assemblage of persons on any private or public property, between the hours of 11 p.m. and 7 a.m. the following day.
- (b) Operating or causing to be operated any equipment used in construction, repair, alteration, or demolition work on buildings, structures, streets, alleys, or appurtenances thereto in the outdoors between the hours of 9 p.m. and 7 a.m. the following day, except that no such activity shall commence prior to 9 a.m. on Sundays and Federal holidays.
- (c) Repairing, rebuilding, or modifying, any motor vehicle or other mechanical device in the outdoors between the hours of 9 p.m. and 7 a.m. the following day.
- (d) Operating or permitting the operation of powered model vehicles in the outdoors between the hours of 9 p.m. and 7 a.m. the following day.
- (e) The collection of trash or refuse in residential use districts between the hours of 9 p.m. and 6 a.m. the following day.
- (f) Loading or unloading trucks in the outdoors within one hundred (100) yards of a residence between the hours of 9 p.m. and 6 a.m. the following day. (7-17-68, § 17.9; 24-75-16A; 1961 Code, § 16A.4.1; 34-76-108; 24-98-108.)

Section 108-4-2. Places of public entertainment or assembly.

It shall be unlawful after the Zoning Administrator has given appropriate notice requesting abatement, for any person to operate, or permit to be operated, any loudspeaker or other device for the production of sound in any place of public entertainment or other place of public assembly which produces sound pressure levels of 90 dB(A) or greater at any point that is normally occupied by a person, as read with the slow response on a sound level meter, unless a conspicuous and legible sign is located outside such place, near the entrance, stating "WARNING! PROLONGED EXPOSURE TO SOUND ENVIRONMENT WITHIN MAY CAUSE HEARING IMPAIRMENT." (24-75-16A; 1961 Code, § 16A.4.2; 3-79-108.)

Section 108-4-3. Quiet zone.

(a) ~~It shall be unlawful for any person to create any noise in excess of that prescribed within any area designated as a “quiet zone” in conformance with the provisions of Subparagraph (b) of this Section; provided conspicuous signs are displayed in adjacent or continuous streets indicating that said area is a quiet zone.~~

(b) ~~Whenever the protection of the public health, safety and welfare so require, after a duly advertised public hearing, the Board of Supervisors may designate any geographical area of Fairfax County as a “quiet zone.” Such designation shall include a description of the subject area, the reasons for its designation as a quiet zone, and shall prescribe the level of noise which shall be permitted in such quiet zone. (24-75-16A; 1961 Code, § 16A.4.3.)~~

~~Section 108-4-4. Maximum permissible sound pressure levels.~~

(a) ~~It shall be unlawful for any person to operate, or permit to be operated, any stationary noise source in such a manner as to create a sound pressure level which exceeds the limits set forth in the table following titled “Maximum Sound Pressure Levels” when measured at the property boundary of the noise source or at any point within any other property affected by the noise. When a noise source can be identified and its noise measured in more than one zoning district classification, the limits of the most restrictive classification shall apply.~~

(b) ~~Notwithstanding the provisions of the foregoing Subsection, sound created by the operation of power equipment, such as power lawn mowers and chain saws, between the hours of 7 a.m. and 9 p.m. the same day shall be permitted so long as they do not constitute a noise disturbance. (7-17-68, § 17-4-3; 24-75-16A; 1961 Code, § 16A.4.4.; 34-76-108.)~~

MAXIMUM SOUND PRESSURE LEVELS				
ZONING DISTRICT CLASSIFICATION	MAXIMUM dBA	OCTAVE BAND LIMIT	CENTER FREQUENCY HERTZ — (HZ)	dB
		31.5	70	
		63	69	
		125	64	
		250	59	
RESIDENTIAL	55	500	53	
		1,000	47	
		2,000	42	
		4,000	38	
		8,000	35	
		31.5	75	

		63	74
		125	69
		250	64
COMMERCIAL	60	500	58
		1,000	52
		2,000	47
		4,000	43
		8,000	40
		31.5	85
		63	84
		125	79
		250	74
INDUSTRIAL	72	500	68
		1,000	62
		2,000	57
		4,000	53
		8,000	50

1 -

~~Section 108-4-5. Permissible motor vehicle sound pressure levels.~~

- (a) ~~The maximum sound pressure level emitted by motor vehicles not equipped with a muffler conforming to the requirements of §§ 46.1-301 and 46.1-302, Va. Code Ann., operated on a public right-of-way as measured at a point fifty (50) feet from the motor vehicle shall be as provided in the table below titled "Motor Vehicle Noise Limits."~~

~~MOTOR VEHICLE NOISE LIMITS~~

Vehicle Class	Sound Pressure Level, dB(A) Speed limit 35 mph or less	Speed limit above 35 mph
Any motor vehicle with a manufacturers gross vehicle rating of 10,000 pounds or more, and any combination of vehicles towed by such motor vehicle	86	90
Any motorcycle	82	86
Any other motor vehicle and any combination of vehicles towed by such motor vehicle	76	82

1 -
2 ~~(24-75-16A; 1961 Code, § 16A.4.5.)~~

3
4 **~~Section 108-4-6. Civil transport category airplane operations; noise limitations.~~**

5
6 (a) ~~No person may operate, to or from an airport wholly or partially located within Fairfax County,~~
7 ~~Virginia, any civil transport category airplane unless:~~

8
9 (1) ~~That airplane complies with the noise level requirements of the Federal Aviation~~
10 ~~Administration (14 CFR, Part 36) for subsonic transport category airplanes; or~~

11
12 (2) ~~That airplane had flight time before December 31, 1974.~~

13
14 (b) ~~This amendment shall remain in full force and effect only until such time as its provisions are~~
15 ~~superseded by FAA standards (established under § 711 of the FAA Act) which can be enforced~~
16 ~~by any citizen of Fairfax County.~~

17
18 (c) ~~Notwithstanding any other provision of this ordinance, the Zoning Administrator shall enforce~~
19 ~~the noise limitations for civil transport category airplane operations only in the following~~
20 ~~manner. He shall serve a notice of violation on any person who violates these provisions,~~
21 ~~providing a reasonable time for abatement or discontinuance of the violation. Should the person~~
22 ~~in violation of these provisions fail to take such corrective steps, the Zoning Administrator shall~~
23 ~~request the County Attorney to seek injunctive relief.~~

24 ~~(3-76-108; 21-76-208; 3-79-108.)~~

25
26 **~~Section 108-4-7. Landfills; maximum sound pressure levels.~~**

27
28 ~~It shall be unlawful for any person to operate, or permit to be operated, any motor vehicle,~~
29 ~~stationary noise source or device, or any combination thereof, at a landfill in such a manner as to~~
30 ~~create noise which:~~

31
32 (a) ~~When measured at any point within any other property affected by the noise, exceeds the~~
33 ~~following equivalent sound levels (Leq):~~

34
35 (1) ~~Property used for residential—Leq of 55 dB(A).~~

36 (2) ~~Property used for commercial—Leq of 60 dB(A).~~

37 (3) ~~Property used for industrial—Leq of 72 dB(A).~~

38 or

39
40 (b) ~~When measured at the property boundary of the landfill or at any point within any other~~
41 ~~property affected by the noise exceeds an A-weighted sound pressure level of seventy-five~~
42 ~~(75) dB(A).~~

1 For the purpose of this Section, a minimum test period of one (1) hour shall be used for the Leq,
 2 and the survey shall be conducted in accordance with the standards and procedures specified in
 3 Procedural Memorandum 103.² [H](#)

4 (~~37-81-108.~~)

5
 6 **~~Section 108-4-8. Measurement procedures.~~**

7
 8 (a) ~~Field measurement procedures for the enforcement of the sound pressure levels set forth in this~~
 9 ~~Chapter shall be promulgated by the Zoning Administrator.~~

10
 11 (b) ~~Noise shall be measured with a sound level meter and octave band analyzer.~~

12 (~~24-75-16A; 1961 Code, § 16A.4.6; 3-76-108; 3-79-108; 37-81-108.~~)

13
 14
 15 **~~ARTICLE 5. Reserved.~~**

16
 17
 18 **~~ARTICLE 6. Variances and Exemptions Permitted.~~**

19
 20 **~~Section 108-6-1. Emergencies.~~**

21
 22 An exemption from the provisions of this Chapter is granted for noise caused in the performance
 23 of emergency work. Nothing in this Section shall be construed to permit law enforcement,
 24 ambulance, fire or other emergency personnel to make excessive noise in the performance of their
 25 duties when such noise is clearly unnecessary.

26 (~~24-75-16A; 1961 Code, § 16A.6.1.~~)

27
 28 **~~Section 108-6-2. Undue hardship.~~**

29
 30 (a) ~~Any person responsible for any noise source may apply to the Zoning Administrator for a~~
 31 ~~variance or partial variance from the provisions of this Chapter. The Zoning Administrator may~~
 32 ~~grant such variance or partial variance if he finds that:~~

33 (1) ~~The noise does not endanger the public health, safety or welfare; or~~

34 (2) ~~Compliance with the provisions of this Chapter from which variance is sought would~~
 35 ~~produce serious hardship without producing equal or greater benefit to the public.~~

36
 37 (b) ~~In determining whether to grant such variance, the Zoning Administrator shall consider the time~~
 38 ~~of day when noise will occur, duration of the noise, its loudness relative to the required limits of~~
 39 ~~this Chapter, whether the noise is intermittent or continuous, its extensiveness, the technical and~~
 40 ~~economic feasibility of bringing the noise into conformance with this Chapter and such other~~
 41 ~~matters as are reasonably related to the impact of the noise on the health, safety and welfare of~~
 42 ~~the community and the degree of hardship which may result from the enforcement of the~~
 43 ~~provisions of this Chapter.~~

1 ~~(c) No variance or partial variance issued pursuant to this Section shall be granted for a period to~~
2 ~~exceed one (1) year, but any such variance or partial variance may be renewed for like periods if~~
3 ~~the Zoning Administrator shall find that such renewal is justified after again applying the~~
4 ~~standards set forth in this Section. No renewal shall be granted except upon application therefor.~~

5
6 ~~(d) Any person aggrieved by a decision of the Zoning Administrator made pursuant to Article 6 of~~
7 ~~this Chapter may obtain review of such decision by the County Executive by delivering a written~~
8 ~~statement of grievance to the Office of the County Executive within thirty (30) days from the~~
9 ~~date of the decision.~~

10
11 ~~The County Executive shall review all statements of grievances and shall, within sixty (60) days~~
12 ~~from the date of the Zoning Administrator's decision, either affirm or set it aside, making such~~
13 ~~further order as shall be necessary to effectuate the provisions of this Section.~~

14 ~~(24-75-16A; 1961 Code, § 16A.6.2; 3-79-108.)~~
15
16

ATTACHMENT C

PROPOSED COUNTY CODE AMENDMENT

Amend Chapter 5, Offenses, Article 6, An Ordinance to Regulate Certain Excessive Sound Generation in Residential Areas and Dwellings, by repealing it in its entirety.

~~5-6-1. Declaration of findings and policy.~~

~~The Board hereby finds and declares that certain audible and discernible sounds are a serious hazard to the public health, welfare, peace and safety and the quality of life of the citizens of Fairfax County; that the people have a right to and should be ensured an environment free from such sound that may jeopardize the public health, welfare, peace and safety or degrade the quality of life; and that it is the policy of the Board to prevent such sound to the extent such action is not inconsistent with a citizen's First Amendment rights.~~

~~5-6-2. Definitions.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Audible* means the sound can be heard by the human ear with or without a medically approved hearing aid or device.~~

~~*Discernible* means that the sound is sufficiently distinct such that its source can be clearly identified.~~

~~*Emergency* means any occurrence or set of circumstances involving actual or imminent physical injury or illness or property damage that requires immediate action.~~

~~*Emergency work* means any work performed for the purpose of preventing or alleviating the physical injury or illness or property damage threatened or caused by an emergency, including work performed by public service companies when emergency inspection, repair of facilities, or restoration of services is required for the immediate health, safety, or welfare of the community.~~

~~*Instrument, machine or device* means and refers to any musical instrument, radio, phonograph, compact disc player, cassette tape player, amplifier or any other machine or device for producing, reproducing or the amplification of sound.~~

~~*Residential area* means the parcel on which a residential dwelling is located and any contiguous rights of way, roads, streets, lanes, sidewalks, or other such means of egress and ingress to any such parcel.~~

~~*Residential dwelling* means any building or other structure, including multifamily and mixed use structures, in which one or more persons lives on a permanent or temporary basis, including, but not limited to, houses, apartments, condominiums, hotels, and motels.~~

~~*Sound* means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.~~

~~*Sound generation or to generate sound* means any conduct, activity or operation, whether human, mechanical, electronic or other, including but not limited to, any animal or bird, and any instrument, machine or device, whether continuous, intermittent or sporadic, and whether stationary or ambulatory in nature, which produces or results in a sound that is audible and discernible to the human ear.~~

~~5-6-3. Administration and enforcement.~~

- ~~(a) The police department may issue a summons for enforcement of the noise control program established by this article and may be assisted by other County departments as required.~~
- ~~(b) Nothing in this section shall preclude a private citizen from obtaining a magistrate's summons based upon a probable cause determination by the magistrate's office.~~

~~5-6-4. Violations.~~

- ~~(a) Any person who violates any provision of this article shall be deemed to be guilty of a Class 3 misdemeanor for a first offense. Any person who violates a provision of this article within one (1) year from the date of a prior conviction under this ordinance shall be guilty of a Class 2 misdemeanor.~~
- ~~(b) The person operating or controlling the sound generation or source shall be guilty of any violation caused by that generation or source. If it cannot be determined which person is operating or controlling the sound generation or source, any owner, tenant, resident or manager physically present on the property where the violation is occurring is rebuttably presumed to be operating or controlling the sound generation or source.~~
- ~~(c) In addition to and not in lieu of the penalties prescribed in this section, the Board may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this ordinance and may seek any other remedy or relief authorized by law.~~

~~5-6-5. Exceptions.~~

~~No provisions of this ordinance shall apply to:~~

- ~~(1) The emission of sound for the purpose of alerting persons to the existence of an emergency, provided that such alarm signals cease once any such threat is no longer imminent;~~

- (2) The emission of sound in the performance of emergency work;
- (3) Activities for which the regulation of noise has been preempted by federal or state law;
- (4) Motor vehicles travelling on a public right of way;
- (5) Back-up generators operating during power outages resulting from storms and other emergencies;
- (6) Heat pumps and/or air conditioners located on property containing single family detached or attached dwellings that are operating in accordance with the manufacturer's specifications;
- (7) Operation of public transportation facilities;
- (8) Work authorized by a variance or partial variance pursuant to Article 6 of Chapter 108 of the Code.

~~5-6-6. Sound generation and residential dwellings.~~

- (a) ~~No person in any residential dwelling or residential area, including the common areas of multifamily dwellings or mixed use structures, shall permit, operate, or cause any source of sound or sound generation to create a sound that is audible in any other person's residential dwelling with the doors and windows to the other person's residential dwelling closed. In addition, the source of sound or sound generation must be discernible regardless of whether such doors and windows are closed.~~
- (b) *Exemptions.* ~~The following activities or sources of sound shall be exempt during the hours of 7 a.m. to 9 p.m. from the prohibition set forth in section (a) of this section:~~
 - (1) ~~Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property, except no such activities shall commence before 9 a.m. on Saturdays, Sundays, and federal holidays.~~
 - (2) ~~Gardening, lawn care, tree maintenance or removal, and other landscaping activities.~~
 - (3) ~~Refuse collection and sanitation services, except that refuse collection and sanitation services may begin at 6:00 a.m.~~
 - (4) ~~The testing of audible signal devices which are employed as warning or alarm signals in case of fire, emergency, theft, or burglary, or imminent danger.~~
- (c) ~~The following activities or sources of sound shall be exempt during the hours of 7 a.m. to 11 p.m. from the prohibition set forth in section (a) of this section:~~

- (1) ~~Band performances or practices, athletic contests or practices and other such activities on school or recreational grounds.~~
- (2) ~~Bells, carillons, and other calls to worship provided that any such sounds do not occur for a duration of longer than 5 minutes per hour.~~

(d) *Prohibitions.*

- (1) ~~Use of a loudspeaker or other sound amplification device that is mounted in a fixed or movable position on the exterior of any structure between the hours of 11 p.m. and 7 a.m.~~
- (2) ~~Repairing or modifying any motor vehicle or other mechanical device in the outdoors between 9 p.m. and 7 a.m.~~
- (3) ~~Operation of powered model vehicles in the outdoors between 9 p.m. and 7 a.m.~~
- (4) ~~Collection of trash in residential districts and/or within 100 yards of a residence between 9 p.m. and 6 a.m.~~
- (5) ~~Operation of power lawn equipment between 9 p.m. and 7 a.m.~~
- (6) ~~Loading or unloading trucks in the outdoors within 100 yards of a residence between 9 p.m. and 6 a.m.~~
- (7) ~~Sound generation in an area designated by the Board as a quiet zone.~~

~~5-6-7. Severability.~~

~~A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this article shall not affect the validity of the remaining parts thereto.~~

~~5-6-8. Effect on Chapter 108.~~

- (a) ~~Article 5 of Chapter 108 of the Fairfax County Code is hereby repealed in its entirety. But see Article 6 of Chapter 5 of this Code.~~
- (b) ~~To the extent that anything in this Ordinance in regard to the regulation of certain sound generation in residential areas and dwellings, conflicts with any provision of Chapter 108 of this Code entitled "Noise," this article supersedes any such provision in Chapter 108. In addition, notwithstanding anything in this article, all development conditions and proffers of any nature that refer to the Noise Ordinance shall be deemed to apply to Chapter 108 and not this article, and all such development conditions and proffers are unaffected by this article and shall remain in full force~~

and effect. Nor shall anything in this Ordinance be construed to exempt any use from any future development conditions or proffers related to noise.

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